

L. M. DUNN

IBLA 79-208

Decided May 8, 1979

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease offer W 66421.

Affirmed.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents—Oil and Gas Leases: Applications: Drawings

Where a drawing entry card offer to lease is prepared by an agent, that is, a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether the latter signed his principal's name or his own name as his principal's agent, and regardless of whether the signature was applied manually or mechanically.

APPEARANCES: William P. Franzese, Esq., Boston, Massachusetts, for appellant.

#### OPINION BY ADMINISTRATIVE JUDGE STUEBING

L. M. Dunn filed a simultaneous noncompetitive oil and gas lease offer card with the Wyoming State Office, Bureau of Land Management (BLM), for parcel WY 2125 in the November 1978 drawing, which card was drawn with first priority. On December 29, 1978, BLM advised Dunn

that, as his card appeared to bear a facsimile signature, he was required to file an affidavit concerning the circumstances surrounding the preparation of the offer and the affixing of the facsimile signature on the card.

On January 15, 1979, Dunn submitted this affidavit, which shows that the facsimile signature was affixed on the card by Federal Services Corp. (Federal Services), an oil and gas leasing service, and that this service also acted as his agent and negotiator and selected the parcel in question for him. Dunn also submitted additional information concerning the agreement between him and Federal Services which indicates that it agreed to select parcels for him.

On January 23, 1979, BLM issued a decision rejecting Dunn's offer because both he and Federal Services had failed to meet the requirements of 43 CFR 3102.6-1 in that they had not filed agency statements. BLM noted therein that these requirements apply to Dunn's offer, as it was signed by his agent. Dunn appealed from this decision. We affirm.

[1] Where an agent of an offeror for a simultaneous oil and gas lease signs the entry card by affixing a facsimile of the offeror's signature, the requirements of 43 CFR 3102.6-1(a)(2) 1/ apply, and separate statements of interest by both the offeror and the agent must be filed, or the offer will be rejected. H. R. Delasco, 39 IBLA 194 (1979); Gertrude H. D'Amico, 39 IBLA 68 (1979); D. E. Pack (On Reconsideration), 38 IBLA 23, 85 I.D. 408 (1978); D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977). A person is an "agent" of an offeror if he has authority to act with discretion on the offeror's behalf, such as authority to select the parcel on which to file the offer, rather than only to perform manual or mechanical tasks involving no discretion, such as signing entry cards as the offeror's amanuensis. Ibid; Evelyn Chambers, 27 IBLA 317, 83 I.D. 533 (1976).

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1/ For our purposes, the relevant portion of this regulation is subsection (a)(2), set forth in part below:

"(2) If the offer is signed by attorney-in-fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney-in-fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding."

The record indicates that BLM correctly concluded that Federal Services was Dunn's "agent" in formulating and filing these offers, as Federal Services had discretionary authority to select parcels for Dunn. Moreover, Dunn expressly admitted in his affidavit that Federal Services is his agent. As no agency statements were filed by Dunn and Federal Services, as required by 43 CFR 3102.6-1(a)(2), BLM properly rejected his offer.

Appellant argues that his filing of the affidavit on January 15, 1979, fully explains his relationship with Federal Services. Appellant apparently believes that by requesting additional information on December 29, 1978, BLM was affording him and his agent an opportunity to submit belatedly the material required by 43 CFR 3102.6-1. This is incorrect. As Federal Services had failed to submit its statement along with the offer, Dunn's offer would have to be rejected if the requirements of 43 CFR 3102.6-1(a)(2) were found to apply, that is, if an agent had signed Dunn's card on his behalf by affixing a facsimile of his signature to the offer card. The purpose of BLM's inquiry was thus to determine whether it was appropriate to reject his offer, as the time for compliance with these provisions had already passed.

Under 43 CFR 3102.6-1(a)(2), the agency statement by the agent must accompany the offer, and the statement by the offeror must be filed no later than 15 days after the filing of the offer. Appellant's affidavit was thus filed too late to be considered as compliance with these requirements, and the agent apparently never filed the required statement. Thus, BLM properly concluded that 43 CFR 3102.6-1 had been violated and rejected Dunn's offer.

Appellant's suggestion that the rejection of his offer for failure to comply with 43 CFR 3102.6-1 represents a forfeiture has been advanced in other cases. The short answer to that assertion is that no forfeiture has occurred. The mere filing or drawing of an offer for a noncompetitive lease creates no vested rights in the offeror. Donald E. Jordan, 35 IBLA 290, 295 (1978); Burglin v. Morton, 527 F.2d 486 (9th Cir. 1976); C. Burglin, 21 IBLA 234 (1975), aff'd; Burglin v. Secretary of the Interior, Civ. No. A 75-113 (D. Alaska, filed Dec. 29, 1976); Donald Reese, 15 IBLA 101 (1974). An "application for a lease, even though first in time \* \* \* is a hope, or perhaps an expectation, rather than a claim." Schraier v. Hickel, 419 F.2d 663, 666 (9th Cir. 1969). Therefore, where such an application is rejected for any legally cognizable reason, no constitutional issues are raised.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Edward W. Stuebing  
Administrative Judge

We concur.

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Joan B. Thompson  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

